IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1970

No. 1321

BRYAN JEROME MAKER,
Petitioner,

v.

STATE OF WISCONSIN,
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF WISCONSIN

OPINIONS BELOW

The opinion of the Wisconsin Supreme Court is reported as *State v. Maker* (1970), 48 Wis. (2d) 612, N. W. (2d) . The county and circuit court proceedings are not reported.

JURISDICTION

The jurisdictional requisites are set forth in the petition.

QUESTION PRESENTED

Whether the Wisconsin disorderly conduct statute (sec. 947.01 (1), Wis. Stats.) was unconstitutionally or otherwise improperly applied to the petitioner herein.

STATUTE INVOLVED

The Wisconsin statute involved (sec. 947.01 (1), Wis. Stats.) is set forth in the petition.

STATEMENT OF THE CASE

The statement in the petition is adequate.

ARGUMENT

The question of the vagueness of Wisconsin's disorderly conduct statute was not raised in the state court proceedings and is, therefore, not properly before this court. *Ellis v. Dixon* (1955), 349 U. S. 458, 75 S. Ct. 850, 99 L. Ed. 1231. The statute has, in any event, been upheld as facially constitutional. *Zwicker v. Boll* (W.D. Wis., 1967), 270 F. Supp. 131, affirmed *per curiam* 391 U. S. 353, 88 S. Ct. 1666, 20 L. Ed. (2d) 642; *State v. Zwicker* (1969), 41 Wis. (2d) 497, 164 N. W. (2d) 512, appeal dismissed 396 U. S. 26, 90 S. Ct. 199, 24 L. Ed. (2d) 147.

The question before this court is, rather, whether the statute has been unconstitutionally or otherwise improperly applied to the petitioner. The Wisconsin Supreme Court determined that the evidence, and the inferences properly drawn therefrom, were sufficient to support the finding of guilty, and affirmed the conviction. For the purposes of the instant petition, the State of Wisconsin will rest on the unanimous decision and determination of its highest court.

CONCLUSION

It is respectfully submitted that the petition should be denied; and, if granted, that the questions be limited to the statute's application to the acts of this petitioner.

Respectfully submitted,

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Attorneys for Respondent.